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In the Supreme Court of the United States

OCTOBER TERM, 1931

FRANK COOK
PETITIONER

vs.

THE UNITED STATES OF AMERICA

No. 82

Petition for a Writ of Certiorari and Brief in Support Thereof

EDMUND M. TOLAND
JOSEPH E. FITZPATRICK
MORTIMER W. NEWTON
Counsel for Petitioner

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

FRANK COOK

PETITIONER

vs.

THE UNITED STATES OF AMERICA

RESPONDENT

No.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

To the Honorable, Supreme Court of the United States:

Your petitioner, Frank Cook, of Lunenburg, Nova Scotia, claimant of the British Motor Screw "Mazel Tov," hereby makes application to the Supreme Court of the United States for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit to reverse the judgment of said Circuit Court of Appeals dated the 18th day of March, A. D. 1932, which judgment reversed in part decrees of the District Court of Rhode Island, and for his petition therefor respectfully shows as follows:

QUESTION PRESENTED

Whether or not the Circuit Court erred in holding that the Treaty with Great Britain relative to smuggling of intoxicating liquors did not limit search and seizure provisions of the Tariff Act of 1930 to British vessels within one hour's travel from the coast of the United States.

STATEMENT OF THE CASE

This case is a proceeding in admiralty on the part of the United States seeking the assessment of penalties against the British Motor Screw "Mazel Tov" and the forfeiture of her cargo.

The libels filed November 25, 1930, asking for the collection of penalties under Sections 584 and 585 of the Tariff Act of 1930, their assessment and collection being based on the following grounds:

(1) For failure to produce a manifest of the cargo.

(2) For having on board merchandise not described in the manifest.

(3) For having arrived within the limits of the Collection District and attempting to depart therefrom without making entry.

Soon after the vessel was seized, to wit, on the first day of November, A.D. 1930, notice of claim was filed by Frank Cook of Lunenburg, Novia Scotia, the petitioner. The claimant's answer and amendment thereto and exceptions were filed on December 2, A.D. 1930.

The case was called for hearing upon libel and answer, and at the conclusion of the presentation of evidence on behalf of the Government and the claimant the Court reserved decision. On May 16, A.D. 1931, the Judge of the District Court for the District of Rhode Island dismissed the libel seeking the collection of penalties against the vessel and dismissing the libel seeking the forfeiture of the cargo ex-British Motor Screw "Mazel Tov", and the final decrees were entered and filed on May 22, A.D. 1931. (R. 83-85.)

It appears from the Record that at the time the "Mazel Tov", was hailed and stopped by the Coast Guard vessel she was 11½ miles from the shores of the United States. (R. 41.) It also appears from the transcript of testimony that the speed of the vessel was between nine and ten knots an hour. (R. 56.)

Among the finding of facts by the District Court Judge were:

1. That the British Motor Screw "Mazel Tov" at no time was within three miles of the United States nor within the limits of the United States.

2. That the speed of the British Motor Screw "Mazel Tov" was between nine and ten knots an hour.

3. That when stopped by the Coast Guard, a manifest was produced. (R. 89, 90.)

Among the conclusions of law by the District Court Judge were:

1. The court holds that under the provisions of Section 584 of the Tariff Act of 1930 the master of the British Motor Screw "Mazel Tov" did not become liable to pay a penalty of Five Hundred ($500.00) Dollars for not producing a manifest to the coast guard officer who demanded it and that the paper introduced by the claimant constituted a manifest within the meaning of Section 584 of the Tariff Act. (R. 90.)

2. The court holds that under the provisions of Section 584 of the Tariff Act of 1930 the master of the British Motor Screw "Mazel Tov" did not become liable to a penalty of $14,286.18 for having on board said vessel merchandise not included or described in any manifest because the seizure was made beyond the three-mile limit and not in conformity with the Treaty entered into between the United States and Great Britain, proclaimed May 22, 1924. 43 Stat. 1761. (R. 90.)

3. The court holds that the master of the British Screw "Mazel Tov" did not become liable to a penalty of $5,000.00 for departing or attempting to depart from any collection district contrary to the provisions of Section 585 of the Tariff Act of 1930 because at the time the British Motor Screw "Mazel Tov" was directed or signalled to stop by the United States Coast Guard she had not arrived within the limits of the territorial waters of the United

States which extend out to sea for a distance of three miles from shore.

4. The court holds that, under the provisions of Section 594 of the Tariff Act of 1930, the British Motor Screw "Mazel Tov" has not become subject to the penalties of $500, $5,000 and $14,286.18 assessed against her master and that said vessel shall not be held for the payment of such penalties. (R. 90, 91.)

The only questions presented to the said Court of Appeals were:

(1) Whether the treaty of May 22, 1924, changed or amended the four league limit fixed in the various provisions of our revenue laws and, in particular, as fixed in Section 581 of the Tariff Act of 1922, or has or was intended to have any application to the situations provided for and governed by those provisions.

(2) If the treaty did not amend Section 581 in the particular above specified, whether, under the evidence and facts found, the vessel, when she came within four leagues or twelve miles of the shore, was bound for the United States so that the provisions of Sections 581 and 584 became applicable and subjected her to seizure and to the collection of the penalties assessed against her master.

The only penalty as to which any contention was made before the Circuit Court of Appeals, are those for $14,286.18, the value of the merchandise, and for $5,000.00 for departing from a collection district without making entry. The Circuit Court of Appeals held that the vessel became liable for the penalty of $14,286.18 and held that the District Court judge was in error in holding that the British-American Treaty of May 22, 1924 dealt completely with the subject of the limits within which search and seizure of British vessels could be made in the enforcement and application of our laws for the prevention of importation or smuggling of liquor and that the treaty

excluded all extra-territorial seizures not made in conformity with the terms of the Treaty.

The Circuit Court of Appeals sustained the finding of the Court below that the vessel could not be held for the payment of $5,000.00 assessed against the master for the alleged violation of Section 585 of the Tariff Act. (R. 175.)

Respectfully submitted,

EDMUND M. TOLAND,
JOSEPH L. FITZPATRICK,
MORTIMER W. NEWTON,
Counsel for Petitioner.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

FRANK COOK

PETITIONER

vs.

THE UNITED STATES OF AMERICA

RESPONDENT

No.

BRIEF OF PETITIONER IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

On May 26, 1930, a libel was filed by the Government seeking the collection of certain penalties against the British Motor Screw "Mazel Tov" and the forfeiture of her cargo owned by Frank Cook, the petitioner in this case. Subsequently, upon a hearing of said libel and the answer and evidence of the claimant, the court after hearing the evidence, presented by the libellant and the libellee took the case under advisement, and, on the 16th day of May, 1931, rendered its opinion.

The Court said in its opinion. (R. 69.)

> "The third view as to the effect of this treaty, and the one which I believe is supported by the majority of present authorities and by the soundest reasoning, is that it dealt completely with the subject of the limits within which search and seizure of British vessels could be made in the enforcement and application of our laws for the prevention of the importation or smuggling of liquor, and that the treaty excludes all extra-territorial seizures (that is beyond the three-mile limit), not made in conformity with the terms of the treaty. That such was the intention of the parties is apparent from the statement made by Secretary

Hughes, who negotiated the treaty with the British Government, in his note of July 10, 1923, to the British Embassy wherein he said:

"It may confidently be asserted that there would be no disposition on the part of the American authorities, and the special agreement would not justify any attempt, to seize a British vessel, save within the limits proposed, and when it was clear that the vessel concerned was directly involved in an attempt to introduce its illicit cargo into the territory of the United States."

MS. Records, Department of State.

It is a matter of common knowledge that prior to entering into the treaty agreement the British Government had on several occasions protested against the seizure of boats of British registry outside the three-mile limit which carried cargoes of liquor. This situation existed at the time the treaty was negotiated and the convention entered into.

The treaty says:

"The rights conferred by this article shall not be exercised at a greater distance from the coast of the United States . . . than can be traversed in one hour by the vessel suspected of endeavoring to commit the offense."

Can it be seriously urged that after entering into this treaty there remained in all cases the same maximum authority which had before been asserted and which was the cause of the differences to be settled?

On May 25, 1931, the United States appealed from the decree of May 22, 1931, and on March 18, 1932, the Circuit Court of Appeals for the first Circuit entered an order vacating the decrees entered in the District Court in part, that the vessel should be held for penalties assessed against the master in the amount of $14,286.18 and forfeiture of the cargo ex-British Motor Vessel, "Mazel Tov."

ARGUMENT

The argument will be confined to the question involved as follows:

Whether or not the Circuit Court erred in holding that the Treaty entered into between the United States and Great Britain proclaimed May 22, 1924 (43 Stat. 1761) limit search and seizure provision of the Tariff Act of 1930 to British vessels within one hour's travel to the coast of the United States.

Owing to the conflict of decisions in the Lower Courts, the question presented by your petitioner here, is one that should be definitely settled. The Circuit Court of Appeals for the First Circuit arrived at the conclusion that the British-American treaty of May 22, 1924, did not place a limit on sections 581 and 584 of the Tariff Act of 1922, which are the same as the like numbered sections in the Tariff Act of 1930. The real important part of the British-American treaty of 1924 is paragraph (3) of article (2) which provides:

> "The rights conferred by this article shall not be exercised at a greater distance from the coast of the United States its territories or possessions than can be traversed in one hour by the vessel suspected of endeavoring to commit the offense."

The ruling of the Circuit Court of Appeals for the First Circuit seems to your petitioner to be in conflict with the decision of this Court in the case of *Ford et al. vs United States, 273 U. S. 593, 47 S. Ct. 531, 71 L. Ed. 793, in which this honorable* Court said through Mr. Chief Justice Taft at page 618 of 273 U. S.:

> "The parties were dealing with a situation well understood by both. In effect they wished to enable the United States better to police its seaboard, by enabling it *within an hour's sail* from its coast, beyond its territorial jurisdiction, and on the high seas, to seize British actual or would-be smugglers of liquor and, if they were caught, to proceed criminally against them as if seized within the 3-mile limit

for the same offenses in reference to liquor importation. No particular laws by title or date were referred to in the treaty, but only the purpose and effect of them." The court referred specifically to both the National Prohibition and tariff legislation, and on page 619 of 273 U. S., 47 S. Ct. 531, 540 says: Any law, the enforcement of and punishment under which will specifically prevent smuggling of liquor, should be regarded as embraced by the treaty."

The British Government has at all times prior to the British-American treaty of 1924 objected to any search or seizure of one of her Nationals outside of the territorial waters, namely, outside of the three-mile limit.

The "Henry L. Marshall"
286 Fed. 260
(1922 S. D. N. Y.)

The "Louise F"
293 Fed. 933
(1923 D. C. Florida)

The "Madeline D"
12 Fed. (2d) 137
(1926 D. C. S. D. Alabama)

With none of the foregoing cases nor in the instant cases are we concerned with the proposition that every nation has the right to bind its own subjects to its own laws in every other place.

"The right of jurisdiction over vessels owned by its subjects authorizes by this Government the detention and commands the capture of the vessel found on the high seas if, upon reasonable grounds, it is believed to be owned by its subject and would be engaged in violating its laws."

The Law of Territorial Waters and Maritime Jurisdiction — Jessup. Page 267.

The cases above referred to, all of which were prior to the British American Treaty of 1924, indicate to our minds that

the Tariff laws were not applicable to vessels flying a foreign flag unless such vessels came within the territorial limits of the United States. As far back as the Act of August 4, 1790, it was permitted to inspect within four leagues all ships bound to the United States, and the Act provided penalties for failure to carry and produce a manifest upon arrival within that distance. But this Act and the Act of 1799 (which is substantially the same) applied only to incoming vessels belonging wholly or in part to citizens of the United States. No evidence in the instant cases was introduced to show that the British ship "Mazel Tov" or her cargo were owned wholly or in part by any citizen of the United States.

United States vs. 26 Diamond Rings
Fed. Case No. 16572
The Act of 1790
1 Stat. 145, 155, 156 and 157

In the instant cases the United States does not seem to take the view that the acts complained of in their libel constitute an infraction of our Tariff Laws by reason of their invoking in their libel the aid of the British-American Treaty of 1924.

(Record, Page 4.)

It is the contention of the petitioner that the Treaty deals completely with the extreme right of seizure upon which initial jurisdiction of the cause of forfeiture or penalty must depend, and that the Treaty excludes all extra-territorial seizures, namely those outside of the three-mile limit not made in conformity with the terms of the Treaty. It cannot be logically argued that if the foregoing observations were not true the British Government would have, as outlined supra on so many occasions, protested against seizure of boats of British registry outside of the three-mile limit, and again, if there were no differences regarding the authority of the United States concerning extra-territorial jurisdiction, there would be nothing remaining to be settled by the Treaty.

Judge Morton, in the case of the *"Frances Louise" 1 Fed. (2d) 1004*, said:

> "I have great doubt whether any such broad right of seizure exists as the Government contends, but it is not necessary to decide this question, because I am clearly of the opinion that the whole situation is covered by the Treaty . . . If so, upon familiar principles of law, it is conclusive."

The "Sagitind"
11 Fed. (2d) 673

The "Panama"
6 Fed. (2d) 326

The "Over the Top"
5 Fed. (2d) 838

Since the Treaty, therefore, deals completely with this sort of case, and the speed of the British Motor Ship "Mazel Tov" was found not to be in excess of ten knots per hour, there remains upon her no obligation under the Treaty made law to produce a manifest since she was more than one hour's sailing distance from the nearest American territory. The fact remains, however, that in spite of no obligation being incumbent upon the master of the "Mazel Tov" to produce a manifest under the terms of the Treaty when ordered to do so at the point of seizure, he did produce a manifest as testified to by the Government's own witnesses, and which was introduced in evidence at the hearing of the Court below.

From the foregoing facts there could not be and there was not, in view of the provisions of the Treaty, any violation of Section 584 of the Tariff Act of 1930 as alleged in the Government's first and second cause for penalties. It might be argued that there is an inconsistency between the Treaty and the Tariff Act of 1930, and that the rule is the one most recent in point of time controls.

Ribas y Hijo vs. United States
194 U. S. 315

Rainey vs. the United States
232 U. S. 310

The sections of the Tariff Act with which we are concerned in the present instance are identical with the wording of the same sections in the Tariff Act of 1922, and it can not be argued that in the absence of a substantial or material change in the sections in the Tariff Act of 1930 it was the intention of Congress to change the status which "were in effect at the time of the signing of the British Treaty in 1924."

Of the several cases wherein penalties were demanded by the Government for a violation of sections 584 and 585 of the Tariff Act of 1922, the question of whether or not the British-American Treaty excludes all extra-territorial seizures not made in conformity with the terms of the Treaty has never been determined. In the "Metmuzel" case in an opinion written by Judge Parker, the question of the effect of the British-American Treaty on the enforcement of the various sections of the Tariff Act of 1922 was not discussed.

Miller vs. United States, 49 Fed. (2d) 368, certiorari denied 51 S. Ct. 667. In the instant case, however, the British-American Treaty of May 22, 1924, was brought directly into the case by the Government itself when it alleged in its libel seeking a penalty for the violation of Sections 584 of the Tariff Act of 1930, as follows:

> That heretofore, to wit, on the 1st day of November A.D. 1930, on the navigable waters of the United States, to wit, about 9⅞ miles from No Man's Land in the State of Massachusetts and within a Collection District of the United States Customs Service, said Frank Cook, who was then and there master of said British Motor Screw "Mazel Tov," which was then and there bound to the United States, failed to produce the manifest of the cargo of said vessel upon the demand of an officer of the law, to wit, T. J. Sexton, Lt. Commander in command of the United States Coast Guard Destroyer Tucker, duly authorized to make such demand, contrary to the form of the statute and *of the Treaty between the United States and Great Britain,* in such case made and provided.

If the Circuit Court of Appeals for the First Circuit is correct in its holding, that Sections 584 and 585 of the Tariff Act of 1930 are not limited by the British-American Treaty of May, 1924, your petitioner's question is, simply, why was it necessary that a treaty between Great Britain and the United States should be drawn.

CONCLUSION

The petitioner, therefore, prays that his writ of certiorari be granted for the cause herein set forth and principally because of the alleged violation of the British-American Treaty of 1924.

Respectfully submitted,

EDMUND M. TOLAND,
JOSEPH E. FITZPATRICK,
MORTIMER W. NEWTON.

FILE COPY

AUG 13 1932

CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1932

No. 82

FRANK COOK, *Petitioner,*

v.

UNITED STATES OF AMERICA

REPLY BRIEF FOR PETITIONER

EDMUND M. TOLAND,
JOSEPH E. FITZPATRICK,
MORTIMER W. NEWTON,
Counsel for Petitioner.

CORNELIUS FORD, PRINTER, WASHINGTON, D. C.

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IN THE

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UNITED STATES OF AMERICA

REPLY BRIEF FOR PETITIONER

The Government has filed a memorandum stating that, in view of conflicting decisions upon the question involved and to establish a rule for the guidance of its administrative officers, it does not oppose the granting of the petition for *certiorari*, but it suggests two "difficulties which may stand in the way of a decision of the question."

I.

FORM OF PETITION AND BRIEF NOT FATAL TO THE GRANTING OF WRIT OF CERTIORARI.

It is first suggested that our petition and supporting brief do not comply with the rules of this Court in that they do not (a) refer to the statutory basis of this Court's jurisdiction, (b) contain an assignment of errors, or (c) contain a statement of the reasons relied upon for the allowance of the writ.

These suggestions carry formalism to undue lengths. The Government does not contend, and could not maintain, that the petition and brief do not sufficiently disclose the nature of the case and rulings below and the grounds upon which the review by this Court is sought. The suggestion merely is that the petition and brief are defective in matter of form in that they do not expressly state that review is sought by virtue of Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 936, 938), 28 U. S. C. 347, and do not under separate headings list the errors assigned and the reasons for review. In no reported case has this Court ever denied a petition or dismissed a writ of *certiorari* on the express ground of failure to set out these matters in the petition or brief in the formal manner which the Government seems to consider requisite. Neither the rules nor the practice in the Court require that any brief at all be filed in support of a petition of *certiorari*. *Certiorari* has been granted in cases presented upon petition alone. All that is required is that a "summary and short statement of the matter involved and the reasons relied on for the allowance of the writ" (Rule 38, par. 2) shall be included in the petition therefor.

Since no brief at all is required to be filed, the only

contention in the Government's memorandum which requires answer is the suggestion that the "reasons relied upon for the allowance of the writ" are not sufficiently stated. There is no requirement, in the rules or elsewhere, that these reasons be listed *seriatim*. We submit that our petition and the argument filed in its support clearly and succinctly state those reasons.

The Government states that conflicting opinions upon the question here involved makes the case of sufficient importance to warrant granting the writ. It is apparent from this statement that the question is clearly set forth in the petition and brief. The ends of justice will be served by a decision upon the merits even though the Government alleges that there may be some defect in the form of the petition and brief.

The other matters which the Government suggests have been omitted from the petition and brief are a reference to the statutory basis of jurisdiction and an assignment of errors. Rule 27 requires that these two matters be included in all briefs upon the merits, that is, on appeals after jurisdiction has been noted or postponed or on *certiorari* after the writ is granted. It is true that Rule 38, par. 2, provides that if a brief is filed in support of a petition for *certiorari* "it must be direct, concise and in conformity with Rules 26 and 27." But it has never been held that this language requires that a brief in support of a petition of *certiorari* contain all the matters required by Rule 27 for a brief upon final oral argument upon the merits. So to construe that phrase of Rule 38, par. 2, would be to overlook the frequent admonitions of the Court that petitions for *certiorari* must be presented with "studied brevity." *Furness, Withy & Co.* v. *Yang-Tze Insurance Ass'n Ltd.*, 242 U. S. 430, 434.

Since Rule 27 does not in terms apply in full rigor

to cases on petition for *certiorari*, we submit that, in the language of Rule 44, it applies to such cases only "as far as may be," and that consistently with the paramount requirement of brevity, counsel may include in a brief in support of a petition for *certiorari*, if filed, only such additional matter as seems indispensable to amplify the points requiring attention upon the question of granting or denial of the writ. That this is the practical construction which the Bar has given to the rules is demonstrated by the very many briefs in support of petition for *certiorari* at each term which do not contain all the matters of form essential to a brief upon the merits.

But if the petition and brief herein do not strictly comply with the form required by the rules, that it is at most an unwitting failure fully to comply with the rules. It is not a violation of any statute, and raises no question going to the jurisdiction of this Court to grant the writ. We have been unable to find any case (and the Government cites none) in which a petition has been denied or a writ dismissed for the express reason that the petition and the supporting brief were defective in the matters of form here involved, when the matter involved and the grounds for the writ were sufficiently disclosed by the papers presented. As to the reference to the statutory basis of jurisdiction, it is so well understood that the only statute authorizing this Court to issue *certiorari* as an appellate process to the Circuit Court of Appeal is Section 240 (a), Judicial Code, as amended (43 Stat. 936, 938; 28 U. S. C. 347) that, in the interest of brevity we omitted reference to it in our brief. And while we believe that we have sufficiently indicated in our briefs the errors into which, as we contend, the Circuit Court of Appeals has fallen, we filed no separate, formal assign-

ment of errors because no statute requires an assignment of errors on petition for writ of *certiorari;* the statute and rule requiring assignment of errors on appeal (Rev. Stats. 997; 28 U. S. C. 862; Rule 9) has never been construed as applicable to cases on petition for writ of *certiorari;* and we have found no case, and are aware of no practice, construing Rule 38, par. 2, as requiring the inclusion of assignment of errors (pursuant to Rule 27) in briefs in support of petitions for *certiorari.*

There is, therefore, no statute fatal to the granting of this petition, though the petition and brief be considered as not strictly in compliance with the rules as to form; certainly there is nothing to prevent the amendment of the petition and brief to comply with such rules. Out of abundance of caution, therefore, we set out in the appendix hereto a formal assignment of errors, statement of the reasons relied upon for the allowance of the writ, and a reference to the statute by virtue of which review is sought, and request the Court to consider these in amendment of our petition and brief.

II.
QUESTION PRESENTED PROPERLY RAISED IN ANSWERS AND EXCEPTIONS IN TRIAL COURT.

In so far as material on this petition for *certiorari,* this case arose on a libel by the United States to impose penalties and forfeitures upon the British vessel "Mazel Tov" for alleged violation of Section 584 of the Tariff Act of 1930. The answers and exceptions of the petitioner raised *in limine* the contention that the seizure of the vessel was unlawful and that the penalties and forfeiture could not lawfully be imposed

in view of the locality of the seizure (R. 16, 18). The evidence was largely devoted to the questions raised by these exceptions (R. 18-83). The District Court found as a fact that the vessel was seized at a point less than four leagues but more than three miles, from our coast, and at a greater distance than she could traverse in one hour, and then proceeded in its opinion to treat the question whether seizure of a British vessel was warranted on those facts consistently with our Treaty with Great Britain of May 22, 1924 (43 Stat. 1761) (R. 64-83). The Court treated this question of the effect of the Treaty as properly raised by the answers and exceptions, and held that the vessel had been seized in violation of the Treaty, whereupon it dismissed the libels and released the vessel. In its exceptions upon appeal the United States did not contend that the question of the effect of the Treaty upon the validity of the seizure had not been properly raised, but contended that the Court had erroneously decided the question of such effect (R. 91, 92, 93, 96). The case, therefore, went to the Circuit Court of Appeals upon the question of the construction of the statute and the Treaty, no question being raised but that the issue had been properly presented by the pleadings. The Circuit Court of Appeals held that the seizure at the place as found by the District Court was valid under the Tariff Act, which was in no way modified by the Treaty.

On such a record the Government now raises for the first time the contention that there is "serious doubt" whether the question of the effect of the Treaty is presented by the record. It is suggested that the question of the validity of the seizure should have been raised by a preliminary and special plea to the jurisdiction, and that the point was waived by the filing of an an-

swer upon the merits, even though the point was raised in such answer.

We submit:

(1) That there is no basis whatever, either in authority or in practice, for the suggestion that in a proceeding *in rem* in admiralty for the forfeiture of a foreign vessel, the failure to file a separate and special plea to the jurisdiction of the Court is fatal to the consideration of the question of the validity of the seizure of the vessel, when raised *in limine* in the answer and the exceptions.

(2) Whatever may be the better practice, the Government is not now in a position to contend that the issue is not presented on this record—"it being clear that there is no jurisdictional defect in the pleadings."

Few questions are more troublesome than those relating to the pleading of jurisdictional questions. Whether such a question has been properly raised in the record has been made to turn not only upon the nature of the question, but upon the character of the Court, the status of the party raising it, and the time and circumstance of the pleading.

We do not believe that determination of this case will involve any question in this vexing field relating to the proper pleading of objections to the jurisdiction of the Court, we do not feel that the issue raised in reality related to the jurisdiction of the Court. *Rather the question of the validity of the seizure related to the authority of the administrative officers to have made the seizure at the place they did* (*Crowell* v. *Benson*, 285 U. S. 76; L. Ed. Advance Opinions, p. 369, note 17). Thus the question raised by the locality of the seizure was one of the merits of the cause—whether the penalties could be lawfully imposed; whether the statute had been violated. The question thus pre-